IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 822 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANKARBHAI VELJIBHAI MOCHI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR BP DALAL for Appellant
MS HANSA PUNANI, APP for Opponent

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 20/12/2007

ORAL JUDGMENT

This appeal arises out of a judgment and order dated 29.8.97 rendered by the learned Additional Sessions Judge, Sabarkantha. Appellant herein was accused No.1, who along with 6 other accused persons,

was charged with offence punishable under sections 306 and 498-A of the Indian Penal Code. By the impugned judgment, learned Additional Sessions Judge acquitted rest of the accused. The appellant was, however, convicted for the said offence and sentenced to rigorous imprisonment of 5 years and ordered to pay fine of Rs.5,000.

2. The prosecution case is that the appellant was the husband of deceased Anitaben. Anitaben committed suicide by hanging herself on 13th July 1993. Marriage of Anita with the appellant had taken place about a year and half before the incident. That Anita had committed suicide on account of the mental and physical torture and cruelty meted out to her by the appellant and other family members.

3. Sureshbhai, PW-2 who was examined at Ex.16 is the father of the deceased. He stated that marriage of his daughter Anita had taken place a year and half before the date of incident. His son-in-law, i.e. the appellant had thereafter gone to Mascat and returned from there about one and half month before the incident. After returning from Mascat, the appellant had gone to the house of the witness alone without taking his wife. After staying for a couple of days, he went back to his village at Malpur and returned to Bhuj a few days later with Anita. At that time, Anita was carrying marks of beating on her body. Upon being asked, she stated that her mother-in-law, brother-in-law and sister-in-law treat her with cruelty. She stated that her husband wants to get married again, because of which he is beating

her. He was, therefore, not going to sent Anita back to her matrimonial home. However, the appellant requested and assured that such instances will not take place again. Upon such assurance, Anita was sent with him. On 13th July 1993, at night, he was on duty at Bhuj. His brother-in-law who works in Bhuj Telephone Exchange received a phone call stating that Anita has received a knife injury and she has got tetanus. Upon receiving such an information from his brother-in-law, he and his wife left home to reach Malpur. They left for Malpur on 14th July at night and reached there on 15th afternoon. Accused persons told him that Anita died by hanging herself.

In his cross-examination, he agreed that he had not made any allegations against other accused except the appellant. In his complaint before the police, however, he stated that he was not in proper state of mind. Subsequently, when he regained composure, he had given the information to the police. In his cross-examination, he was also shown letter Ex.17 written by his wife to the mother-in-law of Anita. He was also shown letters Ex.18, 19 and 20 written by sister of Anita. He agreed that those letters were written by the respective persons.

4. Anita's mother Laxmiben, PW-3, was examined at Ex.23. She stated that her son-in-law had returned from Dubai about two months before the date of the incident. He had come to her house at Bhuj on 9th May 1993 alone. After staying for two days, he had returned to Malpur and had come back again with Anita. When she asked Anita about her well being at

her matrimonial home, Anita started crying and said that her husband beats her a lot. She stated that other accused also used to harass her. She had complained that since her husband wants to marry again, he beats her. The said witness saw that there were injury marks on her body. Anita at that time refused to go back to her husband's house. Gangaben, sister of the witness had also come there. Her son-in-law had also assured that such instances will not take place again. The appellant thereafter took Anita with him. On 13th July 1993, Lakhubhai who was serving in the Telephone Exchange had received a phone call because her sister Gangaben's husband who also works there was not present. Lakhubhai passed on the message that Anita has got knife injury and she is serious. The witness's husband was on night duty at that time. He came home at 8 O' clock in the morning. On the next day i.e. 14th July 1993, she and her husband left for Malpur. When they reached, they were told that Anita has committed suicide by hanging.

In her cross-examination, she denied that in police statement, she had not stated that there were injury marks on the body of the deceased. She denied that her daughter and son-in-law were in very good mood when they stayed at Bhuj.

5. Gangaben, PW4, Ex.24 is the sister of Laxmiben. She stated that she had happened to come to her sister's house at Bhuj and had met Anita.

Upon being asked about her well being at her matrimonial home, Anita started crying stating that her husband does not like her and treats her with cruelty. Anita stated that she would not like to go back to her matrimonial home. However, there was compromise between two sides and the appellant had assured that he would not ill-treat her again. After staying about 15 days, he had returned to Malpur with Anita.

6. Lakhubhai Tejabhai, PW-5, Ex.25 was the telephone operator at Bhuj Telephone Exchange who had received the phone call on 13th July 1993 regarding the injury to Anita. He stated that on 13th July 1993, at quarter to 12 at midnight, a phone call came from Malpur made by Govindbhai and Shankarbhai and asked for Shivji Chavda. Since he was not present, the witness was given the message that Sureshbhai (father-in-law of appellant Shankarbhai) be conveyed that Anita got hurt with a knife and has got tetanus and she has lost consciousness. The witness after the duty hours informed Laxmiben, wife of Sureshbhai about the phone call.

7. Shivjibhai Chavda, PW-6, Ex.26 is the husband of Gangaben. He, however, did not have any personal information about the condition of Anita.

8. Dr.Punamchand Parmar, PW-1, Ex.12, was the doctor who had carried out the post-mortem on the body of Anita. He found external and internal injuries corresponding to death by hanging. He was of the opinion that the person had died due to

suffocation on account of hanging.

9. On behalf of the defence, one Hareshkumar Gaur, DW-1 was examined at Ex.53. He was an employee in the Civil Supplies Department at Malpur. He was examined primarily to show that some of the accused had separate ration cards and were thus not residing with the appellant and his wife. Since rest of the accused have been acquitted by the learned Additional Sessions Judge, deposition of this witness need not be discussed at length.

10. On the basis of the evidence led by the prosecution, it can be seen that Sureshbhai, PW-2, father of Anita, Laxmiben, PW-3, mother of Anita and Gangaben, PW-4, sister of mother of Anita, all stated that Anita had complained to them that her husband was not treating her well, that he used to beat her and the reason for the same was that he wanted to get married again. According to these witnesses, appellant had gone to Anita's parents house shortly before the incident. In fact, Laxmiben, PW-3, had given the exact date of visit of her son-in-law as 9th May 1993. According to the witness, initially,the appellant had gone alone without taking his wife with him. After staying there for a couple of days, he had gone back and returned with his wife and stayed for some more time. At that time, Anita had complained about the cruelty, beating and ill-treatment particularly by the appellant. She had stated that such treatment was on account of the desire of the appellant to get married again.

11. It may be recalled that the marriage had taken place only a year and half before the incident. It has also come on record that during much of this period, the appellant had remained away somewhere in the Middle-East for work. After coming back from there, according to the prosecution witnesses, he indicated the desire to marry someone else and started ill-treating Anita. The incident in question took place on 13th July 1993. It is not in dispute that Anita died on account of suicide by hanging. The witnesses had also stated that when the appellant came with Anita in May 1993, they were not willing to sent Anita back with the appellant because of his treatment to her. However, he assured that such instances will not repeat. Upon such assurance alone, Anita was sent with him. Shortly, thereafter, the incident of Anita committing suicide took place. Information regarding such suicide also was sent by the appellant in somewhat ambiguous manner. As per the witnesses, a phone call was made at the Telephone Exchange where Anita's mother's sister's husband was working. Since he was not available at that time, message was passed on to Lakhubhai, PW-5, who in turn conveyed the message to Anita's mother. In the telephonic message, what was conveyed to the family was that Anita has got injured with knife and that she is not in good condition.

It is true that letters Ex.17 to 20 did not give any indication of harassment of Anita. Letter Ex.17 was written by the mother of Anita while letters Ex.18 to 20 were written by sister of Anita. Anita's sister's letters were written when the

appellant was away. Anita's troubles, as per the prosecution version started after the appellant came back from Middle-east. Letter Ex.17 written by mother of Anita also cannot be a conclusive prove of no harassment of Anita by the appellant since apparently, she complained to her mother subsequently about her condition.

12. Considering the evidence led by the prosecution on record, in so far as present appellant is concerned, I do not find that the learned Sessions Judge committed any error in holding the charges against the appellant as proved.

13. Appellant, as per the witnesses, was treating Anita with cruelty. There was sufficient evidence on record to establish this charge. Additionally, I also find that considering the nature of evidence and considering the proximity of the cruelty meted out by the appellant on the deceased with her act of committing suicide, as also considering the short duration of marriage, presumption under section 113-A of the Evidence Act should arise. The appellant, therefore, shall also be held guilty for abetting suicide and rightly convicted under section 306 of the Indian Penal Code.

14. The learned Trial Judge has sentenced the appellant for 5 years of rigourous imprisonment. I see no reason to interfere with the quantum of punishment also.

15. In the result, the appeal fails and is hereby dismissed. Bail bond stands cancelled. The appellant shall, however, have time upto 9th February 2008 to surrender.

(Akil Kureshi, J.)

(vjn)